

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 5-12-1995

CRIMINAL APPEAL NO. 1211 OF 1986

For Approval and Signature:

THE HON'BLE MR. JUSTICE A.N. DIVECHA

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

=====

Shri Adil P. Mehta, Advocate for the appellants.

Shri S.R. Divetia, Addl.Public Prosecutor for the respondent.

=====

Coram: A.N. Divecha,J. & H.R. Shelat,J.
(5-12-1995)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

Delivering the judgement on 30th September 1986 in Sessions Case No. 63 of 1985, the then learned Additional Sessions Judge, Panchmahals at Godhra, convicted the appellants of the offence under Section 302 read with Section 34, Indian Penal Code, and each one was sentenced to life imprisonment, consequent upon which the present appeal has been filed before

this Court.

2. In short it is the prosecution case that deceased Mavala Agara Rathod and appellants are cousins. With regard to their agricultural land, deceased had paid the land revenue. Out of the total land revenue paid, certain portion of the same was to be borne by appellants. As certain amounts were paid by deceased for and on behalf of appellants so as to satisfy whole of the liability, he was pressing much for realisation of the sum from appellants, and therefore appellants were annoyed. On 21st February 1985 at 15.00 hours at Kaliyawad village deceased demanded the amount he spent for appellants. The appellants losing the temper took the scythe (dharria) and gave the blows on the head and shoulder as a result deceased sustained fatal injuries to which he succumbed. A complaint was then lodged. The police officer commenced the investigation and at the conclusion of the investigation, the chargesheet against appellants came to be filed before the learned Judicial Magistrate, (First Class) at Limkheda. As the learned Judicial Magistrate, (First Class) was not competent to hear and decide the case of murder, he committed the case to the Court of Sessions at Godhra. The case then came to be numbered as Sessions Case No. 63 of 1985. The then learned Sessions Judge at Godhra assigned the matter to the then learned Additional Sessions Judge at Godhra for hearing and disposal in accordance with law. The learned Additional Sessions Judge then framed the charge at Exh.2 to which appellants pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence and at the conclusion of the hearing considering the rival submissions and evidence on record, the learned Judge below came to the conclusion that the prosecution, beyond reasonable doubt succeeded in proving the charge. He therefore held both appellants guilty and convicted and sentenced aforesaid. It is against that order, the present appeal has been preferred before us.

3. Mr. Adil Mehta, learned Advocate representing appellants labouring much submitted that in the instant case appreciation of evidence made is not at all consistent with the rules of law; it being slipshod and perverse, the judgment and order passed by the lower court were required to be disconcerted and set aside. He then took us to the evidence of different witnesses and submitted how the learned Judge was not right in reaching to the particular conclusions against the appellants.

4. We have gone through the evidence on record and we see no justification to interfere with the judgment and order passed by the lower Court. Navsingh Agara, whose deposition has been recorded at Exh.13 hearing the shouts rushed to the place of offence. He could see that his brother Mavala was dead. His evidence is not shaken in the cross-examination and whatever he

has stated is rightly accepted by the learned Judge which supports the case of the prosecution to the extent that Mavala was injured and because of the injuries he died. Who caused injuries is not made clear by this witness because he did not see the incident. The prosecution has therefore examined Kajubhai Navsing at Exh.15. He has without missing any point, narrated the manner in which the incident happened right from beginning to end. What transpires from his evidence is that because of the land revenue there was dissension between the two; and when the deceased pressed much for the amount he spent for appellants, they were got annoyed and being in high dudgeon taking scythe chased the deceased and gave scythe blows on the head and shoulder which this witness could see remaining at a very short distance. Because of the injuries Mavala died. This witness is not assailed in the cross-examination effectively; on the contrary, reading the cross-examination it appears that virtually appellants accepted the version of this witness. The versions of this witness inspire confidence leaving no room to doubt. The learned Judge has therefore rightly placed reliance thereon. Another witness, Navsingh Bhimabhai (Exh.16) has also supported the case of the prosecution. His house is situated about 40 feet away from the place of the incident. He was in his house, he heard shouts and could see the incident. He went out and by the time he reached to the place of incident, appellants had run away. Mavala was lying in wounded condition. Mr. Adil Mehta, learned Advocate representing appellants contended that the evidence of this witness was highly doubtful because he could not have seen the incident as the crop of the height of about 6 to 7 feet was standing in the field. The contention is misconceived because the panchnama on record shows that tur (a kind of pulse) crop was standing in the field, the height of which can never be ordinarily more than 2 1/2 feet. One would therefore be able to see from a distance of 40 feet. Nothing has been suggested to the witness that he was not able to see clearly owing to one or another obstruction. There is nothing on record to doubt his versions. The lower Court cannot be said to have fallen in error in placing reliance on the evidence of this witness.

5. One more aspect cannot be lost the sight of. The scythe was seized from appellants whereon bloodstains were found. When the appellants were arrested their clothes were also bloodstained. The clothes and scythe were sent to the Chemical Analyzer. The Chemical Analyzer found that the blood group of the bloodstain on the muddamal sent was 'A'. It may be mentioned that blood group of the deceased was also 'A'. On the strength of this blood group, the learned Judge has rightly connected appellants with the charge levelled against them. There is nothing on record going to show that appellants were injured and their blood group was also 'A'. Under the circumstances, we see no justification to interfere with the judgment and order passed by the lower Court. The appreciation of the evidence made is

quite in consonance with law. On no other count, more submissions were made before us. In view of the matter, the judgment and order passed by the lower Court are required to be maintained. The appeal is devoid of merits and must fail. In the result, the appeal is hereby dismissed and judgment and order of conviction and sentence passed by the lower Court are maintained.

.....